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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,426	04/16/2004	Charles Goralnik	7519	9837

7590

02/17/2005

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EXAMINER

FOSTER, JIMMY G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,426

Applicant(s)

GORALNIK, CHARLES

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 is/are allowed.
- 6) ☒ Claim(s) 6-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/04</u> . | 6) <input type="checkbox"/> Other: ____. |

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1) Claims 1-5 are allowable. The reference of Han (5,979,647) does not fairly disclose or suggest compartments that are semicircular and contiguous in a lid such as claimed.

2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3) Claims 6-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Han (5,979,647). In the reference of Han there is provided a lid at base member 20. Applicant's claimed invention does not distinguish over such a lid. The lid 20 of Han includes upwardly open compartments at 21-25.

Each of the compartments 21-25 has multiple flat sides and therefore is partially angular in configuration. It is asserted that these compartments of Han may be considered to be polygonal within the meaning of Applicant's claiming of such a term since each compartment only has to be at least partially angular (per Applicant's dependent claim 8). The sides are integrally connected to the upper surface of the base of the lid and to the inner surface of the rim of the lid. Two of the compartments, 22 and 25, have three flat sides.

Rim 29 may be considered to include a curled over lip (exterior portion of the rim) since the term "curl" is broad enough to mean "to bend around".

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Rim 29 engages the cup rim 62. The upper surface of the bottom of each compartments 21-25 may be considered to define a closure base upper surface.

Regarding the limitation calling for the specific volumetric capacity of the compartments, this is not considered to distinguish over Han since the reference of Han states that the size of the compartments 21-24 may vary depending on the amount of the additives to be placed therein (col. 3, lines 31-33) Inasmuch as the volumetric capacity would be determined for the compartments 21-24, the volumetric capacity of the compartment 25 would be the volume of the lid that is left, except perhaps for the spout 35 and the vent hole 38.

4) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5) Claims 6 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Croner (3,743,520). The reference of Croner, there is provided a can/cup (see col. 2, lines 59-61), which includes a bottom and side walls (10). On top of the can/cup is provided a lid 12,16. This structure is a lid since it at least partially closes the top of the can/cup. This lid defines a concavity. A closure base of the lid is provided by the bottom wall portion 12. Accordingly, Applicant's upper surface of the closure base can be read on by the upper surface of element 12.

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In the concavity of this lid are provided a series of compartments/sections 18,19,20 which are defined by or divided by side wall portion 16 (col. 3, lines 17-20). The compartments 18-20 are considered to be polygonal since they each apparently have two flat sides which are defined by the side wall portion 16, and apparently by the wall portion between compartment 20 and compartment 19 (if such wall portion is not a part of wall portion 16).

The cup lid includes a rim 13 which curls up over the rim of the can/cup. It is apparent from the disclosure of Croner that the side wall portion 16 (including the portion between compartments 19 and 20) inherently extends to the rim 13 of the lid since the compartments maintain the contents in the compartments separate from each other, as clearly evident in the drawings.

The compartments are shown to be completely filled or partially filled, and to include different relative sizes. Accordingly, Applicant's limitation regarding the compartments being of specific volumetric capacity does not distinguish over the subject matter of Croner.

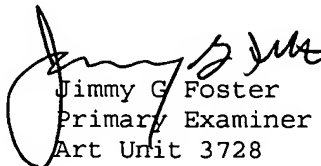
Although the reference of Croner does not disclose making the side wall portion 16 integral with the upper surface of the closure base 12 and with the rim 13, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1893); See also In re Heinrich, 268 F.2d 753, 756, 122 USPQ 388, 390 (CCPA 1959). Accordingly, inasmuch as the reference of Croner substantially already shows using said side wall portions to keep the contents of the lid separate, it would have been obvious for this reason to merely have made said wall portion integral with the upper surface of the closure base 12 and with the rim 13.

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6) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
16 February 2005